BRUNEI REPORTS

Belait United Traction Co Ltd & Anor v Roslan bin Hj Bongso

COURT OF APPEAL (BRUNEI) — CIVIL APPEAL NO 8 OF 1989
TI LIANG YANG P, FUAD AND MAYO COMMISSIONERS
29 MAY 1990

Tort — Negligence — Fatal accident — Whether deceased contributorily negligent

Damages — Lost years computation — Whether judge erred in taking deceased's promotion prospects into account

This is the appellants' appeal against those parts of the judgment which held that (i) the second appellant was wholly to blame for the motor accident in which the respondent's wife was killed, and (ii) the appellants should pay general damages for the lost years of the deceased in the total sum of $454,995. In his defence the second appellant made the following allegations: (i) the deceased was guilty of contributory negligence in that she drove too fast, and (ii) the judge erred in taking into account the deceased's prospect of promotion when assessing lost years.

Held, dismissing the appeal:

(1) The trial judge was perfectly entitled on the evidence as a whole, to come to the view that the deceased was not driving at an excessive speed and that she was not guilty of contributory negligence.

(2) On the evidence, the deceased's chances of promotion were very good. Having regard to vacancies and performance, there was every prospect that she would become a senior education officer, if not five years after confirmation then some time after that.

Case referred to

1 *Young* v *Percival* [1974] 3 All ER 677 (refd)

David Teo for the appellants.
Daljit Singh Sandhu for the respondent.

Cur Adv Vult

Ti Liang Yang P (delivering the judgment of the court): This is the two appellants' appeal against those parts of the judgment of Mr Commissioner Bokhary which held that (i) the second appellant, for whose negligence the first appellant was vicariously liable, was wholly to blame for the motor accident in which the respondent's wife was killed, and (ii) the two appellants should pay general damages for the lost years of the deceased in the total sum of $454,995. There is no appeal as regards other heads of damages.

The deceased was at all material times an education officer with the government of Brunei serving a three-year probationary period which had begun on 18 July 1987. Her monthly salary was $2,630 plus a monthly allowance of $100. On the evidence, the learned trial judge found that the deceased was very likely to have been confirmed in her post at the end of her three-year probationary period, ie in the summer of 1990. On this finding there is no dispute. The judge also found that she had 'a more or less even chance' of being promoted to a senior education officer five years from the time she was confirmed as an education officer. The starting monthly salary of a senior education officer was $3,880 plus an allowance of $100 per month.

The deceased at the time of her death was almost 26 years of age. The normal retirement age from government service is 55. The learned trial judge described this as a doubly tragic case as indeed it was. Not only was the deceased a young married woman, killed in the most terrible circumstances, so was the child she was bearing, for she was at the time two months pregnant. The deceased and her husband had no children.

The judge found as a fact that about 6.30am on 22 June 1988 the deceased was driving her private car along Jalan Tengah from Seria towards Kuala Belait in a 40 mph area. Suddenly the coach which the second appellant was driving came from the opposite direction to turn into the (G11/G12) side-road and cut across the path of the deceased's car, causing a collision which killed the deceased instantaneously. The sketch plan which was exhibited in the court below shows the coach lying across the dual carriageway at an angle with its front pointing in the direction to be expected of a vehicle making a right turn from the main road into the side road. The private car is shown on its correct side of the road. The front offside of the car is shown under the front of the coach. The stretch of the road at that point is straight, and it was a clear and bright day.

In his defence, the second appellant alleged that the deceased was guilty of contributory negligence in that she drove too fast. The judge on the other hand thought it more probable that the deceased did not break the speed limit of 40 mph. The vehicle examiner who examined the two vehicles was unable to give any idea of the speed of either vehicle on the basis of the damage done to the vehicles. The judge in his judgment stated that he did not think excessive speed on the part of the deceased was proved at all, 'let alone excessive speed on her part as a causa causans of the collision'. The judge found the second appellant, for whose tort his employee, the first appellant, was vicariously liable, wholly to blame for the collision and its consequences. There was no contributory negligence on the deceased's part.

Counsel for the appellants, Mr Teo, sought to rely on the evidence of the deceased's passenger in the private car, viz her niece, that the deceased was driving at 40 to 50 mph, thereby exceeding the speed limit. There was no evidence that the niece was a driver or in any way experienced in assessing speed of vehicles. She also said in

evidence that her aunt was driving slowly and that they were not in a hurry.

In our judgment, the trial judge was perfectly entitled on the evidence as a whole, to come to the view that the deceased was not driving at an excessive speed and that she was not guilty of contributory negligence.

Mr Teo next contends that the judge erred in taking into account the deceased's prospect of promotion when assessing lost years. Mr Teo argues that as promotion depended on good performance and vacancy it could not be said there was a probability that she would be promoted. *Young* v *Percival*[1] was cited, wherein Megaw LJ (at p 681) in assessing the deceased's future prospects, alluded to 'a probability, though by no means a certainty', that if the deceased had lived, he would by the date of the trial had been advanced to the post of a general sales manager.

Our attention was directed to certain passages in the evidence of the administrative officer at the Ministry of Education, Pg Sabli (PW8), and that of the principal of the school in which the deceased was a teacher, Pg Zainal (PW11).

Pg Sabli's evidence was that depending on good performance and vacancies it was 'most likely' for the deceased to become senior education officer in three to five years, though it was not possible to be certain about her prospects. He also added that Brunei was very short of education officers and senior education officers, especially of locals.

The deceased's principal, Pg Zainal, said in evidence that whilst it was difficult to assess her performance because she was a new officer, he was able to say that given time he was sure she would perform very well. He continued:

> I think that in five years' time she would not have found difficulty in becoming senior education officer. She had the ability required. If there was vacancy, five years after confirmation as education officer there was vacancy as senior education officer, I wouldn't hesitate to say, from what I have seen, that she could do it.

Then, inspite of this assessment, he, curiously, estimated her prospects as '50/50 chance'. Finally he said that only two local officers had not been promoted after seven years as education officers.

It seems clear to us, on the evidence, her chances of promotion were very good indeed. Having regard both to vacancies and performance, there was every prospect that she would become a senior education officer, if not five years after confirmation, then some time after that. We find no cause to criticize the judge's conclusion that 'she had a more or less even chance of being appointed a senior education officer five years from then', and 'if she was not so appointed then, she would probably have been so appointed some time after that'. This limb of the appeal therefore fails.

Lastly, Mr Teo submits that the judge was wrong in adopting as the multiplicand a free balance amounting to two-thirds of the probable net earnings, which was manifestly excessive. Mr Teo suggests a free balance of 40% in this case. Taking into consideration (as the judge has done) that the deceased was a middle-ranking government servant, rather simple in her tastes and frugal in her habits, and in the context of life in Brunei, we cannot say the judge was wrong in his assessment.

The appeal is accordingly dismissed with costs.

Appeal dismissed.

Solicitors: *Ibrahim, Chee, Teo, Law & Co; Sandhue & Co.*

Reported by *Kevin Mathews*

Hamidah bte Abd Hamid & Anor v Polynesia Offshore Supplies (B) Bhd

COURT OF APPEAL (BRUNEI) — CIVIL APPEAL NOS 1 AND 2 OF 1990
TI LIANG YANG P, FUAD AND MAYO COMMISSIONERS
26 MAY 1990

Bankruptcy — Adjudication and receiving orders — Setting aside — Whether indorsement on notice was defective — Whether irregularity curable — Bankruptcy Ordinance, s 124 — Bankruptcy Rules, r 45(3)

This is an appeal on the grounds, inter alia, that the indorsement on the bankruptcy notice was defective. The time given for making an application to set aside the notice was seven days which was the same period given in the body of the notice for compliance with the terms of the notice failing which an act of bankruptcy would have been committed. According to r 45(3) of the Bankruptcy Rules, the period is three days. The respondent invited the court to invoke the provisions contained in s 124 of the Bankruptcy Ordinance on the ground that no prejudice had in fact been occasioned by the irregularity and that it was clear from the appellant's affidavit that she did not have any grounds to enable an application to set the notice aside to have any prospect of success.

Held, allowing the debtors' appeal:

It is clear that bankruptcy proceedings are of quasi-penal nature and it is imperative that the procedural requirements are strictly complied with. The indorsement was so defective as to amount to an irregularity which cannot be cured by the provisions contained in s 124.

Legislation referred to
Bankruptcy Ordinance s 124
Bankruptcy Rules r 45(3)